

frontier

180 South Clinton
Rochester, NY 14646

JAN 17 1995

January 16, 1995

BY OVERNIGHT MAIL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: CC Docket No. 87-266

Dear Mr. Caton:

Enclosed for filing please find an original plus nine (9) copies of the Reply Comments of Frontier Corporation in the above-docketed proceeding.

To acknowledge receipt, please affix an appropriate notation to the copy of this letter provided herewith for that purpose and return same to the undersigned in the enclosed self-addressed envelope.

Very truly yours,

Michael J. Shortley, III

cc: International Transcription Service

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its prohibition on the acquisition of in-region cable facilities;⁴ (c) should permit, but not mandate, preferential access to video dial-tone platforms for public, educational or governmental ("PEG") and not-for-profit programmers;⁵ and (d) should conclude that extending existing pole attachment and conduit access requirements applicable to channel service applications to video dial-tone applications is unnecessary⁶ (although Frontier would not object to such a requirement).

First, the Commission should not attempt to dictate the technologies that exchange carriers must deploy to offer video dial-tone service. The Commission has clearly articulated a common carrier obligation that sufficient capacity be available to serve multiple programmers.⁷ The Commission should leave the matter as it stands and permit exchange carriers to determine, in deploying video dial-tone platforms, the best means by which they may comply with that obligation as the individualized circumstances facing them dictate.

Second, the Commission should adopt regulations permitting the acquisition of in-region cable facilities to provide video dial-tone service where competition is infeasible. This approach would promote the availability of video programming where it might not

⁴ See *id.*, ¶¶ 276-79.

⁵ See *id.*, ¶¶ 280-84.

⁶ See *id.*, ¶ 285.

⁷ *Id.*, ¶¶ 33-39.

otherwise exist and would do so without offending the Commission's pro-competitive policies.

Third, the Commission should permit, but not require, exchange carriers to offer preferential access to video dial-tone platforms for PEG and not-for-profit programmers. Such flexibility will permit exchange carriers to tailor offerings to meet specific market conditions and is consistent with traditional common carrier obligations.

Fourth, extension of the Commission's pole attachment and conduit access requirements embodied in section 63.57 of the Commission's rules to video dial-tone section 214 applications is unnecessary, but unobjectionable.

Argument

I. THE COMMISSION SHOULD DECLINE TO MANDATE ANY PARTICULAR TECHNOLOGY FOR USE IN PROVIDING VIDEO DIAL-TONE SERVICE.

The comments confirm that the Commission should decline to mandate any particular technology for the provision of video dial-tone service or establish specific rules governing channel-sharing arrangements on analog systems.⁸ Video dial-tone is a new and untested service. More importantly, exchange carriers' video dial-tone platforms will be competing with entrenched cable monopolies. Thus, attempting to establish rules to anticipate problems that may not even exist⁹ and to presume the existence of a monopoly

⁸ See *id.*, ¶¶ 274-75.

⁹ *E.g.*, Ameritech at 4-6; BellSouth at 1-2.

environment for video dial-tone service¹⁰ would be completely inappropriate. Rather than attempt to anticipate problems, the Commission should provide exchange carriers with sufficient flexibility to devise appropriate platform architectures and channel-sharing arrangements and let the market determine the success or failure of those arrangements.

Moreover, as mechanisms to ensure that sufficient capacity exists to serve multiple programmers, the proposals are unnecessary. The Commission has articulated a policy that exchange carriers shall make sufficient capacity available to accommodate multiple programmers and shall expand such capacity to meet increased demand if such expansion is technologically and economically feasible.¹¹ These requirements more than suffice to address capacity concerns.¹² Exchange carriers offering video dial-tone service will need to design their systems to comply with these basic obligations. Additional regulatory requirements are wholly unnecessary.

Moreover, such additional requirements would be extremely counterproductive. Mandating that all video dial-tone platforms incorporate substantial digital capabilities may well render the service uneconomic in many areas. Digital technology -- while cost-effective in specific applications in communications networks -- is not yet cost-effective in

¹⁰ *E.g.*, US West at 2-3.

¹¹ Third Further Notice, ¶¶ 33-39.

¹² The Commission must recognize the, inherent in the "technologically and economically feasible" standard is a willingness to pay for additional capacity. The Commission cannot expect exchange carriers to expand video transmission capacity willy-nilly to accommodate requests for large chunks of that capacity (*e.g.*, Home Box Office at 3) absent the willingness of programmers to pay for such capacity expansion.

ubiquitous, end-to-end service delivery. Moreover, as Ameritech notes,¹³ video dial-tone systems will need to offer analog capacity in order to be attractive to consumers, at least initially.

Similarly, mandating specific channel-sharing arrangements may well adversely affect the economic viability of video dial-tone systems. As the Commission recognizes, different companies have proposed different channel-sharing arrangements.¹⁴ These differences are necessary to respond to different market conditions. Straight-jacketing channel-sharing arrangements into a set of inflexible requirements would do no more than impose unnecessary costs on exchange carriers attempting to compete with incumbent cable operators.¹⁵

Rather than promulgating specific, technology-oriented regulations, the Commission should permit exchange carriers to demonstrate, in the section 214 process, that the systems they propose satisfy the common carrier obligations articulated by the Commission. To the extent that an exchange carrier can so demonstrate, it should be a matter of indifference to the Commission how an exchange carrier complies with its obligations.

¹³ Ameritech at 3.

¹⁴ Third Further Notice, ¶ 273.

¹⁵ Those parties that contend that any channel-sharing arrangement is unlawful or inconsistent with the video dial-tone regime (e.g., Atlantic Cable Coalition at 13-15) are incorrect. Such arrangements are simply means of allocating a potentially scarce resource and are not inherently discriminatory. Because the Commission cannot anticipate what problems will occur -- or, indeed, if problems will arise at all -- these concerns are best addressed on a case-by-case basis.

**II. THE COMMISSION SHOULD RELAX
ITS PROHIBITION ON THE ACQUISITION
OF IN-REGION CABLE FACILITIES TO
PROVIDE VIDEO DIAL-TONE SERVICE.**

The Commission should relax its existing prohibition on the acquisition of in-region cable facilities for use in providing video dial-tone service where more than one video transport provider is not economically sustainable.¹⁶ Virtually all parties supported this proposal. As for the Commission's suggestion that it attempt to define those circumstances in which it should permit such acquisitions, the Commission should not attempt to do so. As BellSouth describes,¹⁷ these circumstances may vary widely. Therefore, promulgation of hard-and-fast criteria governing such acquisitions is problematic at best. For this reason, the Commission should evaluate in-region cable acquisitions on a case-by-case basis. In so doing, the Commission should consider the economic justification for such acquisitions, particularly whether the affected communities can support two video transport providers.

¹⁶ See *id.*, ¶¶ 277-78.

¹⁷ BellSouth at 4 *ff.*

**III. THE COMMISSION SHOULD PERMIT,
BUT NOT REQUIRE, PREFERENTIAL
ACCESS FOR PEG AND NOT-FOR-PROFIT
PROGRAMMERS.**

Predictably, the parties split on whether the Commission should mandate preferential access to PEG and not-for-profit programmers. Commercial interests oppose such a requirement¹⁸ while PEG interests support it.¹⁹ This split suggests that the Commission should evaluate preferential access proposals in light of individual circumstances. As the Commission notes,²⁰ certain carriers have proposed offering preferential access arrangements (at least in terms of rates) to PEG and not-for-profit programmers. Such arrangements are appropriate, but not necessary in all cases. The Commission should, therefore, permit, but not require, these preferential access arrangements.

The necessity for preferential access arrangements is debatable. There is no reason to believe that, as a general rule, PEG and not-for-profit programmers cannot afford

¹⁸ *E.g.*, Atlantic Cable Coalition at 21-27.

¹⁹ *E.g.*, Alliance for Community Media , *passim*.

²⁰ Third Further Notice, ¶ 255.

access to video dial-tone platforms.²¹ On this basis, the Commission should decline to adopt mandatory preferential access requirements.

The Commission should, however, permit such arrangements. Those carriers that have offered such arrangements likely have taken this course in response to local conditions. This approach, if warranted, is consistent with, but not mandated by, common carrier responsibilities. Commissions have historically recognized, for rate-setting purposes, different classes of customers, *e.g.*, residential vs. business, interexchange carriers vs. enhanced services providers. Thus, the suggestion that such arrangements are unlawful or inconsistent with common carrier obligations,²² is, therefore, incorrect. There is no reason for the Commission to refuse to recognize, if appropriate for a particular video dial-tone offering, the proposed distinction between PEG and not-for-profit programmers, as a class, and other programmers.

²¹ Whether such access is affordable to PEG and not-for-profit programmers will depend entirely upon the prices proposed for video transport. To date, however, the Commission has approved only one tariff for video dial-tone service -- for the trial of Frontier's subsidiary, Rochester Telephone Corp. That trial, however, is extremely limited, both in duration and in number of customers served. As such, it does not provide a benchmark for addressing the affordability issue. In this circumstance, it would be imprudent for the Commission to attempt to address the issue in a factual vacuum.

However, the Commission should flatly reject any suggestion that it require video dial-tone providers to subsidize studio equipment and the like that would be used by PEG and not-for-profit programmers. See, *e.g.*, Local Governments at 12. If such subsidies are required, they should be funded through the political process.

²² *E.g.*, Atlantic Cable Coalition at 26-27.

**IV. EXTENSION OF POLE ATTACHMENT
AND CONDUIT ACCESS REQUIREMENTS TO
VIDEO DIAL-TONE APPLICATIONS IS
UNNECESSARY, BUT UNOBJECTIONABLE.**

Section 63.57 of the Commission's rules requires exchange carriers proposing channel service offerings to demonstrate, in their section 214 applications, that nondiscriminatory access to poles and conduits is available to competing cable systems.²³ The Commission proposes to extend this requirement to video dial-tone section 214 applications. Frontier believes that such a requirement is superfluous. Nonetheless, if the Commission believes that it should adopt this proposal, Frontier would have no objection.

Conclusion

For the foregoing reasons, the Commission should address the proposals contained in the Third Further Notice in the manner suggested herein.

Respectfully submitted,

Michael J. Shortley, III

Attorney for Frontier
Corporation

180 South Clinton Avenue
Rochester, New York 14646
(716) 777-1028

January 16, 1995

²³ Third Further Notice, ¶ 285.

Certificate of Service

I hereby certify that, on this 16th day of January, 1995, copies of the foregoing Comments of Frontier Corporation were served by first-class mail, postage prepaid, upon the parties on the attached service list.

Michael J. Shortley, III

SERVICE LIST

**CC Docket No. 87-266 - In the Matter of TELEPHONE COMPANY - CABLE TELEVISION
Cross-Ownership Rules, Sections 63.54-63.58**

Robert Abrams, Esq.
Mary Hilgeman, Esq.
Daniel W. Rosenblum, Esq.
120 Broadway
New York, New York 10271

Veronica M. Ahern, Esq.
Robert A. Mazer, Esq.
Nixon, Hargrave, Devans & Doyle
One Thomas Circle NW, Suite 800
Washington, DC 20005

Mr. Maurice Astley
Executive Vice President
Oregon Independent Tel. Assoc.
555 Union Street, NW
Salem, Oregon 97301

Mr. Allan E. Anderson PE
Chairman
Marshall Cable TV Commission
P.O. Box 310
Marshall, MN 56258

Susan Allender, Esq.
William H. Smith, Jr.
Chief, Bureau of Rate and
Safety Evaluation
Iowa State Utilities Board
Lucas State Office Building
Des Moines, Iowa 50319

Henry L. Baumann, Esq.
Barry D. Umansky, Esq.
Benjamin F. P. Ivins, Esq.
Terry L. Etter
Natl. Assoc. of Broadcasters
1771 N Street, NW
Washington, DC 20036

Mr. Paul G. Berra
Cable Communications Manager
City of St. Louis, Missouri
301 City Hall
St. Louis, Missouri 63103

Brian R. Moir, Esq.
Fisher, Wayland, Cooper & Leader
1255 23rd Street, N.W.
Suite 800
Washington, DC 20037-1125

Mr. Paul R. Cianelli, President
Mr. Thomas K. Steel, Jr., Vice Pres.
New England Cable TV Assoc., Inc.
100 Grandview Road, Suite 201
Braintree, MA 02184

Mr. Richard M. Firestone, Chief
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 500
Washington, DC 20554

Mary B. Bushnell, Chairman
Illinois Commerce Commission
Leland Building
527 East Capitol Avenue
P.O. Box 4905
Springfield, IL 62708

Frank W. Lloyd, Esq.
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, DC 20004

Mr. Rex Bryan
Pinnacles Telephone Company
340 Live Oak Road
Paicines, California 95043

Mr. Thomas P. Cohan, Dir.
Office of Cable Communications
Boston City Hall
Boston, MA 02201

Ms. Angela J. Campbell
Ms. Elizabeth Fine
Ms. Lisa Lapinski
Citizens Commun. Center
Georgetown University Law
600 New Jersey Avenue NW
Washington, DC 20001

John W. Corwin, Esq.
Mary Hilgeman, Esq.
Bureau of Consumer Frauds & Protection
Energy and Utilities Section
120 Broadway
New York, NY 10271

Anthony J. Celebrezze, Jr., Esq.
Robert S. Tongren, Esq.
Ann E. Henkener, Esq.
PUC of Ohio
180 East Broad Street
Columbus, Ohio 43266-0573

Jonathan D. Blake, Esq.
Martin Wald, Esq.
Covington & Burling
1201 Pennsylvania Avenue, NW
P.O. Box 7566
Washington, DC 20554

Mr. William J. Buckner
Executive Director/Secretary
Georgia PSC
244 Washington Street, SW
Atlanta, GA 30334

John P. Cole, Jr., Esq.
Frances J. Chetwynd, Esq.
Cole, Raywid & Braverman
1919 Pennsylvania Avenue, NW, #200
Washington, DC 20006

James D. Ellis, Esq.
William J. Free, Esq.
Paul G. Lane, Esq.
Southwestern Bell Corp.
One Bell Center, Suite 3512
St. Louis, Missouri 63101-3099

Howard C. Davenport, Esq.
Peter G. Wolfe, Esq.
Public Service Commission of
the District of Columbia
450 5th Street, NW, 8th Floor
Washington, DC 20001

William J. Cowan, Esq.
Public Service Commission of
the State of New York
Three Empire State Plaza
Albany, New York 12223

Ms. Maxine B. Davison
Chief Executive Officer
Ogden Telephone Company
21 West Avenue
Spencerport, NY 14559

Terry G. Davis, Esq.
Counsel for Alabama Public
Service Commission
P.O. Box 4864
Montgomery, AL 36103-4864

Mr. J. Richard Devlin
Mr. Fred L. Sgroi
United Tel. System Co.
P.O. Box 11315
Kansas City, Missouri 64112

Mr. Philip S. Demarest
VP of Finance & Admin. Sec.
Warwick Valley Tel. Co.
47-49 Main Street
Warwick, NY 10990

Mr. Larry W. DORITY
Executive Vice President
Missouri Telephone Association
P.O. Box 785
Jefferson City, MO 65102

Mr. Louis D. Draghetti
Department of Weights & Measures
Consumer Advisory Commission
36 Main Street
Agawam, MA 01001

Brenda L. Fox, Esq.
David L. Nicoll, Esq.
National Cable TV Association, Inc.
1724 Massachusetts Avenue, NW
Washington, DC 20036

Mr. James F. Ferris
Domestic Facilities Division
Common Carrier Bureau
Federal Communications Comm.
2025 M Street, NW, Room 6008
Washington, DC 20554

Stephen R. Effros, President
James H. Ewalt, Vice Pres.
Community Antenna Television Assoc.
3950 Chain Bridge Road
P.O. Box 1005
Fairfax, VA 22030-1005

Wade H. Hargrove, Esq.
Randall M. Roden, Esq.
William A. Davis, II, Esq.
Tharrington, Smith & Hargrove
209 Fayetteville Street Mall
P.O. Box 1151
Raleigh, NC 27602

Aaron I. Fleischman, Esq.
Arthur H. Harding, Esq.
Matthew D. Emmer, Esq.
Charles S. Walsh, Esq.
Fleischman and Walsh, PC
1400 16th Street NW, Suite 600
Washington, DC 20036

Mr. E. B. Fitzgerald, Jr.
Peoples Mutual Tel. Co. Inc.
P.O. Box 367
Gretna, VA 24557

Mr. George A. Dyson, President
Wilkes Telephone & Elec. Co.
107 E. Liberty Street
Washington, GA 30673

Ms. Margaret M. Foti, Secretary
New Jersey Board of Public Util.
Two Gateway Center
Newark, New Jersey 07102

Mr. Ralph L. Fry, Exec. Dir.
Virginia Tel. Association
700 E. Main Street, Suite 1420
Richmond, VA 23219

John M. Glynn, Esq.
Maryland People's Counsel
231 East Baltimore Road
Baltimore, MD 21202

Ms. Paula W. Gold, Secretary
Massachusetts Exec. Office of
Consumer Affairs and Bus. Reg.
One Ashburton Place, #1411
Boston, MA 02108

Mr. James R. Hobson, VP
Donelan, Cleary, Wood & Maser, PC
1275 K Street NW, Suite 850
Washington, DC 20005

Linda K. Gardner, Esq.
Missouri Public Service Comm.
301 West High
Jefferson City, Missouri 65102

Mr. DeWitt F. Helm, Jr., President
Assoc. of Nat'l. Advertisers, Inc.
1725 K Street, NW, #601
Washington, DC 20006

Ms. Barbara J. Guffey
SWC4 Administrator
250 East Broadway
Monticello, MN 55362

John L. Grow, Esq.
New York State Commission
on Cable Television
Three Empire State Plaza
Tower Building, 21st Floor
Albany, NY 12223

John R. Feore, Jr., Esq.
Donna C. Gregg, Esq.
Blade Communications, Inc.
Dow, Lohnes & Albertson
1255 23rd Street, NW, Suite 500
Washington, DC 20037

Mr. Clinton Hanson, Gen. Mgr.
James Valley Cooperative Tel. Co.
235 First Avenue East
P.O. Box 147
Groton, SD 57445-0147

Ms. Sally Goodgold
Chair, Board of Trustees
The City Club of New York
33 West 42nd Street
New York, NY 10036

Werner K. Hartenberger, Esq.
John I. Davis, Esq.
Suzanne M. Perry, Esq.
Laura H. Phillips, Esq.
Dow, Lohnes & Albertson
1255 23rd Street NW, Suite 500
Washington, DC 20037

William D. Basket, III, Esq.
Christopher J. Wilson, Esq.
Thomas E. Taylor, Esq.
Frost & Jacobs
2500 Central Trust Center
201 East Fifth Street
Cincinnati, OH 45202

Robert A. Alm, Director
Dept. of Commerce & Cons. Affairs
The State of Hawaii
1010 Richards Street
Honolulu, Hawaii 96809

Joan M. Griffin, Esq.
GTE Telephone Companies
1850 M Street N.W.
Suite 1200
Washington, DC 20036

Robert L. Hoegle, Esq.
Timothy J. Fitzgibbon, Esq.
Olwine, Connelly, Chase,
O'Donnell & Weyher
1701 Pennsylvania Avenue, #1000
Washington, DC 20006

Ms. Sharon B. Ingraham
Chair, Board of Directors
National Federation of Local
Cable Programmers
P.O. Box 27290
Washington, DC 20038

Mr. Don Grigg, Manager
Western Iowa Telephone Assoc.
P.O. Box 38
Lawton, Iowa 51030

Mr. Billy L. Hotchkiss, Manager
Huxley Cooperative Tel. Co.
102 North Main
Huxley, Iowa 50124

Mr. Paul Klein
419 Park Avenue South
New York, NY 10016

Robert G. Jones, Mayor
City of Lee's Summit
207 S.W. Market
Lee's Summit, MO 64063

Michael S. Pabian, Esq.
Floyd S. Keene, Esq.
Attorneys for the
Ameritech Operating Companies
Room 4H76
2000 West Ameritech Center Drive
Hoffman Estates, Illinois 60196

Cameron F. Kery, Esq.
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, P.C.
One Financial Center
Boston, MA 02111

Mr. Brian Kelly
Executive Vice President
Berkshire Telephone Corp.
19 Broad Street
Kinderhook, NY 12106

Mr. Wayne Kern
Ms. Linda Williams
Heritage Communications, Inc.
2195 Ingersoll Avenue
Des Moines, Iowa 50312

Peter Arth, Esq.
Edward W. O'Neill, Esq.
Mark Fogelman, Esq.
State of California & PUC of CA
505 Van Ness Avenue
San Francisco, CA 94102

Stephen G. Kraskin, Esq.
Deborah Stuehrmann-Salbego, Esq.
Blooston, Mordkofsky, Jackson
& Dickens
2120 L Street, NW, Suite 400
Washington, DC 20037

Gene Kimmelman, Esq.
Legislative Director
Consumer Federation of America
1424 16th Street NW, #604
Washington, DC 20036

Elizabeth A. Kushibab, Esq.
Arizona Corp. Commission
1200 West Washington Street
Phoenix, Arizona 85007

Mr. J. Kent Jerome
Secretary-Treasurer
Iowa Telephone Association
1601 22nd Street, Suite 209
West Des Moines, Iowa 50265

Martin T. McCue, Esq.
VP & General Counsel
United States Telephone Assoc.
900 19th Street NW, Suite 800
Washington, DC 20006-2105

Ms. Patsy Judd
Executive Director
Kentucky Cable TV Assoc.
P.O. Box 415
Burkesville, KY 42717

Mr. Russel D. Widmer
Sr. Telecomm. Policy Analyst
Arkansas Public Service Commission
1000 Center Street
Little Rock, Arkansas 72203

Frank J. Kelley, Esq.
Don L. Keskey, Esq.
Henry J. Boynton, Esq.
Michigan PSC
1000 Long Boulevard, #11
Lansing, MI 48911

Gary L. Lieber, Esq.
Robert L. Duston, Esq.
Schmeltzer, Aptaker & Shepard
2600 Virginia Avenue NW
Suite 1000
Washington, DC 20037-1905

James F. Meehan, Esq.
Bill Kowalski, Esq.
Elaine M. Leon, Esq.
Connecticut Office of
Consumer Counsel
136 Main Street, Suite 501
New Britain, CT 06051

Lisa M. Zaina, Esq.
OPASTCO
21 Dupont Circle, N.W.
Suite 700
Washington, DC 20036

Robert S. Lemle, Esq.
Senior VP & General Counsel
Cablevision Systems Corp.
One Media Crossways
Woodbury, NY 11797

Mr. Arthur J. Melmer
Chairman - Cable Committee
Village Trustee
Village of Schiller Park
9526 West Irving Park Road
Schiller Park, IL 60176

Linda T. Muir, Esq.
Contel Corporation
245 Perimeter Center Parkway
P.O. Box 105194
Atlanta, Georgia 30346

Mary McDermott, Esq.
Jacqueline E. Holmes, Esq.
NYNEX
120 Bloomingdale Road
White Plains, NY 10605

Mr. James F. Price, President
Kansas Telecommunications Assoc.
704 Jayhawk Tower
700 S.W. Jackson Street
Topeka, Kansas 66603

Howard J. Symons, Esq.
Lisa W. Schoenthaler, Esq.
Leslie B. Calandro, Esq.
Mintz, Levin, Cohn, Ferris,
Glovsky & Popeo, PC
701 Pennsylvania Avenue NW, #900
Washington, DC 20004

Nicholas P. Miller, Esq.
W. Randolph Young, Esq.
Tillman L. Lay, Esq.
Miller, Young & Holbrooke
1225 19th Street NW, Suite 400
Washington, DC 20036

Mr. John Morgan
Assist. to Exec. VP
Legislation/Government Agencies
1925 K Street NW, Suite 211
Washington, DC 20006

W. Terry Maguire, Esq.
Claudia M. James, Esq.
Brigitte M. Rouson, Esq.
Amer. Newspaper Publishers Assoc.
P.O. Box 17407
Washington, DC 20041

Ms. Lorraine J. Orrick, Esq.
Wisconsin Statewide Tel. Co-op. Assoc.
Box 67
Blue River, Wisconsin 53518

David R. Poe, Esq.
ALLTEL
LeBoeuf, Lamb, Leiby & MacRae
520 Madison Avenue
New York, NY 10022

Diane Smith
ALLTEL Service Corporation
1710 Rhode Island Avenue, N.W.
Suite 1000
Washington, DC 20036

Mr. David N. Ream, City Manager
Santa Ana City Hall
20 Civic Center Plaza, M-31
Santa Ana, CA 92701

Stanley J. Moore, Esq.
Pacific Bell & Nevada Bell
1275 Pennsylvania Avenue, NW
4th Floor
Washington, DC 20004

Mr. Michael A. Morris, VP
Congressional & Regulatory Affairs
California Cable TV Assoc.
P.O. Box 11080
4341 Piedmont Avenue
Oakland, CA 94611

John M. Urban, Commissioner
Massachusetts Community Antenna
Television Commission
100 Cambridge Street, Suite 2003
Boston, MA 02202

Mr. Anthony L. Pharr
Prog. Assoc. for Communications
Policy Office of Communication
United Church of Christ
2000 M Street, NW, Suite 400
Washington, DC 20036

Cynthia M. Pols, Esq.
National League of Cities
1301 Pennsylvania Avenue, NW
Washington, DC 20004

Lawrence E. Sarjeant, Esq.
James T. Hannon, Esq.
U.S. WEST, Inc.
1020 19th Street, N.W.
Suite 700
Washington, DC 20036

W. Theodore Pierson, Jr., Esq.
Lee A. Rau, Esq.
Reed, Smith, Shaw & McClay
1200 18th Street NW
Washington, DC 20036

James P. Tuthill, Esq.
Lucille M. Mates, Esq.
Pacific Telesis Group
Pacific Bell and Nevada Bell
140 New Montgomery St., Room 1526
San Francisco, CA 94105

James Bradford Ramsay, Esq.
Natl. Assoc. of Regulatory
Utility Commissioners
1102 ICC Building
P.O. Box 684
Washington, DC 20004

Mr. Joaquin S. Santos, Jr.
General Manager
Guam Telephone Authority
P.O. Box 9008
Tamuning, Guam 96911

Ms. Kathleen Sheran
Chair - Mankato/North Mankato Cable
Communications Advisory Board
City of Mankato
202 East Jackson
Mankato, Minnesota 56001

Donald J. Elardo, Esq.
Larry A. Blosser, Esq.
MCI Telecommunications Corp.
1801 Pennsylvania Avenue, N.W.
Washington, DC 20006

Norman M. Sinel, Esq.
Patrick J. Grant, Esq.
William E. Cook, Esq.
Arnold & Porter
1200 New Hampshire Avenue NW
Washington, DC 20036

Francine J. Berry
David P. Condit
AT&T
295 North Maple Avenue
Basking Ridge, NJ 07920

William B. Wyrrough, Jr., Esq.
Florida Public Service Comm.
101 East Gaines Street
Tallahassee, FL 32399-0850

George H. Shapiro, Esq.
Paul J. Feldman, Esq.
Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue NW
Washington, DC 20036-5339

Stephen R. Ross, Esq.
Barry Lambergerman, Esq.
Robert D. Primosh, Esq.
Fletcher, Heald & Hildreth
1225 Connecticut Avenue NW, #400
Washington, DC 20036

Mr. John F. Tharp
Exec. Vice President
Illinois Telephone Assoc.
P.O. Box 730
300 East Monroe Street
Springfield, IL 62705

Mr. Paul K. Taff
Connecticut Broadcasters Assoc.
101 Tall Timbers Lane
Glastonbury, CT 06033

Brenda L. Fox, Esq.
Hogan & Hartson
555 13th Street NW
Washington, DC 20004

Samuel A. Simon, Esq.
National Consumers League
901 15th Street, NW
Washington, DC 20005

Ms. Barbara Wanzung, Chairperson
Bensenville Cable Commission
700 West Irving Park Road
Bensenville, IL 60106

Mr. Marvin A. Sirbu
Telephone Company-Cable TV
1050 Devon Road
Pittsburgh, PA 15213

J. V. Stone, Chairman
Miami Valley Cable Council
1195 East Alex Bell Road
Centerville, Ohio 45459

Linda K. Smith, Esq.
Shenandoah Telephone Company
Crowell & Moring
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2505

Linda D. Hershman
Vice Pres. - External Affairs
Southern New England Tel. Co.
227 Church Street
New Haven, CT 06510-1806

Ms. Gigi B. Sohn
Mr. Andrew Jay Schwartzman
Media Access Project
2000 M Street, NW
Washington, DC 20036

William C. Sullivan, Esq.
Melanie S. Fannin, Esq.
Michael J. Zpevak, Esq.
Diana J. Harter, Esq.
Southwestern Bell Tel. Co.
1010 Pine Street, Room 2305
St. Louis, MS 63101

Ms. Marsha E. Tate, Secretary
Cable TV Advisory Commission
City Hall
Muscatine, Iowa 52761

Martha Malkin Zornow, Esq.
National Association of Public
Television Stations
1350 Connecticut Avenue, NW
Suite 200
Washington, DC 20036

Ian D. Volner, Esq.
Ronald A. Siegel, Esq.
Robert St. John Roper, Esq.
N. Frank Wiggins, Esq.
Cohn & Marks
1333 New Hampshire Avenue, NW
Washington, DC 20036

James R. Young, Esq.
John Thorne, Esq.
Michael D. Lowe, Esq.
Michael J. Glover, Esq.
Bell Atlantic Tel. Companies
1710 H Street, NW
Washington, DC 20006

Joseph W. Waz, Jr., Esq.
Wexler, Reynolds, Harrison
& Schule, Inc.
1317 F Street, NW, Suite 600
Washington, DC 20004

R. S. Yeago, Jr., President
C F W Communications
P.O. Box 1990
Wanesboro, VA 22980-7590

David Cosson, Esq.
L. Marie Guillory, Esq.
National Telephone Cooperative Assoc.
2626 Pennsylvania Avenue, N.W.
Washington, DC 20037

Margot Smiley Humphrey
Koteen & Naftalin
for TDS Telecom
1150 Connecticut Avenue, NW
Washington, DC 20036

William B. Barfield, Esq.
Thompson T. Rawls, II, Esq.
A. Kirven Gilbert, III, Esq.
BellSouth Corporation
1155 Peachtree Street, NE
Suite 1800
Atlanta, Georgia 30367-6000

Mr. Robert C. Atkinson
Sr. VP-Reg. & External Affairs
Mr. J. Scott Bonney
Dir.-Regulatory Affairs
Teleport Communications Group
One Teleport Drive, Suite 301
Staten Island, NY 10311

Carol F. Sulkes
Vice President - Regulatory
Central Telephone Company
8745 Higgins Road
Chicago, Illinois 60631

Warren G. Lavey, Esq.
James M. Fink, Esq.
Skadden, Arps, Slate, Meagher & Flom
333 West Wacker Drive, Suite 2100
Chicago, Illinois 60606